

~~IN THE MATTER OF A LICENSE AND ALIBOOTMERCANTILE DOCUMENT NO.~~

Issued to: John G. Oram

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1532

John G. Oram

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 30 July 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months outright plus three months on twelve months' probation upon finding him guilty of misconduct. The three specifications found proved allege that while serving as Third Assistant Engineer on board the United States SS SAN JOSE under authority of the license above described, on 26 June 1965, Appellant wrongfully had possession of a switchblade knife; he assaulted and battered crew member Molina with a dangerous weapon, the switchblade knife; Appellant also assaulted and battered Molina by striking and kicking him.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of Molina and the other two seaman who were in the room with him when the alleged attack by Appellant occurred.

In defense, Appellant testified that he had been ashore drinking and does not remember returning to the ship or anything else until the next morning. He admitted ownership of the knife involved.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved and entered the above order of suspension.

FINDINGS OF FACT

On 26 June 1965, Appellant was serving as Third Assistant Engineer on board the United States SS SAN JOSE and acting under authority of his license while the ship was in the port of Rotterdam, Netherlands.

About 2000 on this date, Appellant returned to the ship intoxicated and went to ordinary seaman Molina's room looking for a roommate of Molina with whom appellant played chess. Molina

and two other seaman were in the room but the chess player was not. Appellant was so informed and he left.

In a few minutes, Appellant returned to Molina's room with a switchblade knife (four-inch long blade tapering to a point) in his hand and, for no apparent reason, threatened to kill Molina. The latter grabbed a portable bunk ladder and, when Appellant refused to leave the room pushed the ladder against Appellant in order to force him out of the room. Appellant repeatedly jabbed at Molina with the knife inflicting a puncture wound on his left thumb. During the struggle, Appellant dropped the knife. As Molina was bending to pick up the knife, Appellant struck Molina on the neck with his hand and kicked him in the ribs. Appellant left and Molina took the knife to the Master.

Molina did not miss any work for the balance of the voyage as a result of this incident. At the time of the hearing about three weeks later, Molina had a scar on his left thumb from the knife wound and his ribs were still bruised.

Appellant has no prior record. This was his second voyage since 1955.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that due to differences in the testimony of the three witnesses against Appellant, there is considerable doubt as to whether or not the alleged incident occurred. Appellant should receive the benefit of such doubt.

OPINION

The knife owned and used by Appellant is a switchblade knife of the inertia and gravity type, as defined in 15 U. S. Code 1241(b). Possession of such a knife is prohibited by 15 U. S. Code 1243. In addition, according to Fall v. Esso Standard Oil Co., 297 F.2d 411 (5th Cir. 1961), a switchblade knife is a dangerous weapon within the meaning of 18 U. S. Code 2277 which prohibits the possession of any dangerous weapon on a vessel of the United States. Shipping Articles used for foreign voyages make reference to the prohibition against dangerous weapons. Since Appellant's possession of the switchblade knife was in violation of these two statutes and the Shipping Articles, his possession of the knife was wrongful.

Although there are minor discrepancies in the testimony of the witnesses for the government, their testimony is substantially the same with respect to the material facts of the assault and battery on Molina. It is normal that there should be some differences in the detailed testimony of witnesses who are attempting to recall and repeat exactly what happened during an exciting incident which occurred some time in the past. Therefore, the testimony of these witnesses, which was accepted by the Examiner as true, constitutes substantial evidence that Appellant was guilty of assault and battery as charged in two of the specifications.

For these offenses by a licensed officer, the suspension imposed was extremely lenient.

ORDER

The order of the Examiner dated at New York, New York, on 30 July 1965, is AFFIRMED.

W. D. SHIELDS
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 7th day of December 1965.

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